

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q78138

Michel CHEVANNE, et al.

Appln. No.: 10/697,125

Group Art Unit: 2446

Confirmation No.: 9445

Examiner: Shaq Taha

Filed: October 31, 2003

For: A DEVICE AND METHOD FOR CONTROLLING NETWORK EQUIPMENT MANAGEMENT DATA, FOR A COMMUNICATIONS NETWORK MANAGEMENT SYSTEM

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellants respectfully submit this Reply Brief in response to the Examiner's Answer dated February 24, 2009. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

This Application was originally filed with claims 1-21 which are the subject of this appeal.

Claims 1, 5-11, and 15 stand rejected under 35 U.S.C. 102(e) as being allegedly anticipated by Gandhi et al. (U.S. 2005/0267935). Claims 2-4, 12-14, and 16-20 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gandhi in view of Chobotaro et al. (U.S. 2003/0202408). Claim 21 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gandhi et al. in view of Chobotaro et al., and further in view of Bowman-Amuah (U.S. 6,611,867).

The rejections of claims 1-21 are being appealed.

No claims are currently allowed.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 5-11, and 15 stand rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Gandhi et al. (U.S. 2005/0267935; hereinafter “Gandhi”).
2. Claims 2, 3, 4, 12-14, and 16-20 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gandhi in view of Chobotaro et al. (U.S. 2003/0202408; “Chobotaro”).
3. Claim 21 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gandhi in view of Chobotaro, and further in view of Bowman-Amuah (U.S. 6,611,867).

ARGUMENT

At least for the reasons discussed below, Appellants submit that the rejections of the claims on appeal are improper, and reversal of the grounds of rejection is requested.

First, Appellants submit that claims 1-21 are patentable for at least the reasons presented in the Appeal Brief filed January 5, 2009.

Second, Appellants respond to certain arguments presented in the Examiner's Answer dated February 24, 2009. In the Examiner's Answer, the Examiner provides several pages of response to Appellants' arguments (beginning on page 14 of the Examiner's Answer).

In general, Appellants summarize some of the Examiner's response to Appellants' arguments as follows:

1: Regarding claim 1, Gandhi's User Control Point as a set of modules would allegedly disclose the claimed device (Gandhi, [0059]). Furthermore, Gandhi's Description Documents would allegedly disclose the claimed management data modules including the extracted management data module associated with said at least one new item of equipment management data (Gandhi, [0184]). Still further, Gandhi's dynamic detection in configured networks allegedly discloses the claimed loading, of each new management data module extracted, into said network management system so that the management by said network management system of said equipment management data in said communications network is not interrupted (Gandhi, [0568]).

2: Regarding claim 5, Gandhi's Bridge that is also a Controlled Device announces Bridged Devices and local Controlled Devices independently, with appropriate unique

identifiers, Description Documents and associated URLs (Gandhi, [0197]), and as such, would allegedly disclose a control means which loads management data modules according to at least a first mode in which said management data modules are loaded independently of dependencies between said management data modules and a second mode in which, in loading said management data modules, account is taken of the dependencies between them.

3: Regarding claim 2, Chobotaro's replacement of or addition to, with supplemental device driver control data (305), of the device driver control data (115) that had been read into system memory (Chobotaro, [0016]) would allegedly disclose the putting of said new management data module loaded on standby so as to continue the management of said prior version of the equipment from said old management data module. Furthermore, Chobotaro's writing (204) of new device driver control data to non-volatile memory (120) if the non-volatile memory (120) does not contain the supplemental data or contains different supplemental data (Chobotaro, [0015]) would allegedly disclose the putting said new management data module loaded into service so as to provide the management of said new version of the equipment from said new management data module, when data indicating an integration of said new version of the equipment are received.

4: Regarding claim 3, Gandhi's FIG. 2, remote controller (204), user interface (UI) (240) and controlled device (206) are allegedly configured so as to enable a standby which consists firstly of allowing the management of said new version of the equipment from said new management data module, without taking account of error messages related to its non-integration in said communications network. Furthermore, Gandhi's networking which allows multiple

devices to establish one or more connections with a single device and for a device to be capable of both initiating and accepting connections to/from other devices (Gandhi, [0048]) would allegedly disclose that the standby consists secondly to send a message to said old management data module indicating that a change of version is under way and that said old management data module must not take account of at least some of the error messages related to a conjoint management of the old and new versions of the equipment.

5: Regarding claim 4, Chobotaro allegedly discloses a device driver control data (115) that had been read into system memory and is replaced or added to with the supplemental device driver control data and the old data is replaced and deleted.

6: Regarding claim 21, Bowman-Amuah allegedly discloses choosing network technologies from a group comprising: transmission networks comprising, WDM, SONET and SDH type, data networks; comprising IP and ATM type, and voice networks comprising, conventional, mobile, and NGN type (Bowman-Amuah, FIG. 51 and column 7, lines 35-60).

Appellants respectfully disagree with the Examiner's reasoning.

For the first argument, claim 1 recites “[a] device for controlling equipment management data in a communications network comprising a network management system capable of managing said equipment management data using previously loaded management data modules associated with said equipment management data and stored in a memory.” Furthermore, the device comprises “control means which when there is a request by said network management system to take over at least one new item of equipment management data in said

communications network, extracts from said memory the management data module associated with said at least one new item of equipment [management data], and then loads into said network management system each new management data module extracted, dynamically, so that the management by said network management system of said equipment management data in said communications network is not interrupted.”

The Examiner generally concludes that Gandhi discloses every claimed element, but is not specific as to which particular element(s) of Gandhi the Examiner alleges to correspond to each claimed element.

The Examiner appears to rely upon Gandhi’s User Control Point as allegedly disclosing the claimed device (Examiner’s Answer page 15), however, the claimed device is not taught or suggested by Gandhi’s User Control Point. Gandhi’s User Control Point is a set of modules that enable communication with a UPnP Controlled Device (Gandhi, [0059]). The User Control Point initiates discovery and communication with Controlled Devices, and receives Events from Controlled Devices. Furthermore, the User Control Points are typically implemented on devices that have a user interface, and this user interface is used to interact with Controlled Devices over the network. User Control Points can add value to the network by aggregating the control of multiple Controlled Devices or they can implement a function as simple as initiating the transfer of data to or from a Controlled Device.

To the contrary, the claimed device comprises control means which is explicitly recited to, *upon a request by the network management system to take over at least one new item of*

equipment management data in the communications network, (1) extract a management data module associated with the at least one new item of equipment management data, and (2) then load into the network management system each new management data module extracted, dynamically, so that the management by the network management system of the equipment management data in the communications network is not interrupted. Gandhi is silent as to the inclusion of any control means within the User Control Point which performs the recited extraction of the associated management data module as well as the recited dynamic loading of each new management data module extracted.

Furthermore, Gandhi's User Control Point is further distinguished from the claimed device because Gandhi's User Control Point initiates discovery and communication with Controlled Devices (Gandhi, [0059]), while the controls means of the claimed device performs the extraction and loading when there is a request by said network management system to take over at least one new item of equipment management data in said communications network.

The Examiner also appears to rely upon Gandhi's Description Documents as allegedly disclosing the claimed previously loaded management data module and/or the claimed management data module associated with said at least one new item of equipment management data, however, Gandhi's Description Document is also distinguished from both the claimed previously loaded management data modules and claimed associated management data module because Gandhi's Description Document is clearly only defined to be a structured unit of data that is used by the User Control Point or UPnP Bridge to learn the capabilities of a Controlled

Device, and the Description Documents are requested by the User Control Point and retrieved from a Description Server on a UPnP Controlled Device (Gandhi, [0075]).

However, as recited by claim 1, the *previously loaded management data modules* associated with the equipment management data are stored in a memory, and such *previously loaded management data modules* are used by the network management system to manage the equipment management data. Furthermore, the claimed *management data module* associated with the at least one new item of equipment management data is extracted by the control means of the device when there is a request by the network management system to take over at least one new item of equipment management data, and then the control means further loads into the network management system *each new management data module extracted, dynamically*, so that the management by the network management system of the equipment management data in the communications network is not interrupted. **Such particularly recited inter-relationships between these elements of the claim are not taught or suggested by Gandhi.**

For example, although Gandhi's User Control Point uploads the Description Document and extracts the URLs of the Servers running on the Controlled Device or Bridge (Gandhi, [0184]), the extracted URLs are not (1) new management data module(s) associated with at least one new item of equipment management data, nor are the extracted URLs (2) extracted from *a memory* which stores previously loaded management data modules associated with the equipment management data. Instead, the URLs are solely that which is used to navigate the Description Document. Gandhi's search for a URL is furthermore in relation to a Simple Service Discovery Protocol (SSDP) which enables devices to learn of the existence of potential peer

devices and the required information needed to establish TCP/IP connection to them, and the result of a successful search is the URL (Gandhi, [0117]). Therefore, as the Examiner has previously interpreted Gandhi's Description Document as allegedly disclosing the claimed management data module(s), Gandhi clearly does not teach or suggest every element as claimed at least because it is the URLs of the Servers running on the Controlled Device or Bridge which Gandhi's User Control Point extracts, **and Gandhi's User Control Point does not extract any Description Document itself from a memory storing previously loaded Description Documents** as would be required with the reliance upon Gandhi's Description Documents as allegedly disclosing the claimed management data module(s). As such, the Examiner's alleged construction of Gandhi must fail in view of that which is particularly recited by claim 1.

Still further, the Examiner refers to paragraph [0568] of Gandhi for the alleged disclosure of "wherein the new device is managed and the management data is loaded without rebooting or interrupting the network." However, this conclusory allegation is a result of impermissible hindsight, because Gandhi is silent as to such management of a new device and loading of management data. Contrary to the Examiner's allegation, support for this conclusory statement is not found in paragraph [0568] of Gandhi.

Appellants note that the Examiner has generally recited claim 3 of Gandhi and also referred to paragraphs [0058] and [0059] of Gandhi to discuss different aspects of the particular structure of Gandhi (Examiner's Answer pages 16-17), however, the Examiner does not ever discuss which components are believed to allegedly correspond to each of the claimed

components and how such components of Gandhi and their functions/inter-relationships would allegedly teach or suggest that which is claimed.

Accordingly, Appellants respectfully submit that claim 1 should be allowable because Gandhi does not teach or suggest all of the claimed elements. Claim 11 is a related independent method claim, and is also patentably distinguished over Gandhi for analogous reasons as discussed above. Claims 5-10 and 15 are dependent claims and are therefore allowable based at least on their dependencies as well as for their additionally recited elements.

For the second argument, claim 5 recites “wherein said control means loads management data modules according to at least a first mode in which said management data modules are loaded independently of dependencies between said management data modules and a second mode in which, in loading said management data modules, account is taken of the dependencies between them.”

The Examiner relies upon Gandhi’s Bridge that is also a Controlled Device, as such a Bridge is disclosed in paragraph [0197] of Gandhi as required to announce Bridge Devices and local Controlled Devices independently, with appropriate unique identifies, Description Documents and associated URLs. However, Gandhi is only generally mentioning the announcement of, *inter alia*, Description Documents, but Gandhi is silent as to the inclusion of any specific modes in which *dependencies of Description Documents* (i.e. the alleged management data modules) are taken into account.

Accordingly, Appellants respectfully submit that claim 5 is patentably distinguished for the aforementioned reasons as well as for these additional differences.

For the third argument, claim 2 recites “wherein said control means which controls, whenever a new management data module is loaded, associated with a new version of equipment which has not yet been integrated in said communications network while an old management data module associated with a prior version of the equipment is still loaded and said prior version of the equipment is still integrated in said communications network, i) to put said new management data module loaded on standby so as to continue the management of said prior version of the equipment from said old management data module, until said new version of the equipment is integrated, and then ii), when data indicating an integration of said new version of the equipment are received, to put said new management data module loaded into service so as to provide the management of said new version of the equipment from said new management data module.”

The Examiner relies upon Chobotaro for allegedly disclosing the placing on standby of a new management data module loaded. However, in Chobotaro, irrespective of which one of the device driver control data (115) or the supplemental device driver control data (305) is old or new, Chobotaro’s decision as to whether to update or not to update the driver control data, and the subsequent non-update, or alternatively, the replacement or addition of the device driver control data (115) with the supplemental device driver control data (305), never results in a loading of a new management data module associated with a new version of equipment

while an old management data module associated with a prior version of the same equipment is still loaded and the prior version of the equipment is still integrated in the communications network (Chobotaro, [0016]). Instead, when the driver control data is updated in Chobotaro, the originally loaded device driver control data (115) is replaced by the supplemental device driver control data (305), and therefore “old” data (i.e. the originally loaded device driver control data (115)) would never still be loaded when the “new” data (i.e. the supplemental device driver control data (305)) is loaded.

Accordingly, Appellants respectfully submit that claim 2 is patentably distinguished for the aforementioned reasons as well as for these additional differences.

For the fourth argument, claim 3 recites “wherein said standby consists firstly of allowing the management of said new version of the equipment from said new management data module, without taking account of error messages related to its non-integration in said communications network, and secondly to send a message to said old management data module indicating that a change of version is under way and that said old management data module must not take account of at least some of the error messages related to a conjoint management of the old and new versions of the equipment.”

The Examiner relies upon Gandhi for allegedly disclosing the standby to consist firstly of allowing the management of said new version of the equipment from said new management data module, without taking account of any error messages related to its non-integration in said communications network. However, such a *standby* is not taught or suggested by Gandhi, and

the portions to which the Examiner cites for support, that is, remote controller (204), user interface (UI) (240) and controlled device (206) are not actually found in FIG. 2 of Gandhi. In particular, FIG. 2 of Gandhi does not include any of these elements the Examiner alleges to be present. Furthermore, Gandhi's disclosure is silent on, and completely fails to ever consider error messages related to non-integration of a new Description Document (i.e. the alleged management data module) as a factor, nor does Gandhi even allow for the management of a new version while the old version is still integrated.

Also, the Examiner refers to paragraph [0048] of Gandhi for the alleged disclosure of "wherein the new device and new management data indicates a change of version is under way." However, this conclusory allegation is a result of impermissible hindsight, because Gandhi is silent as to any indication of a change of version being under way. Furthermore, Gandhi's networking to allow multiple devices establish one or more connections with a single device is not even concerned with or related to *an association of a new version while the old version is still loaded*. Contrary to the Examiner's allegation, support for the Examiner's conclusory statement is not found in paragraph [0048] of Gandhi.

Accordingly, Appellants respectfully submit that claim 3 is patentably distinguished for the aforementioned reasons as well as for these additional differences.

For the fifth argument, claim 4 recites "wherein said control means which, in a case of synchronization between said new version of the equipment and said new management data module, deletes said old management data module."

Although the Examiner directs attention to FIG. 3 and reference #305 of Chobotaro as updating device driver control data with supplemental control data, such disclosure does not address Appellants' primary arguments as discussed on pages 17-18 of the Appeal Brief filed January 5, 2009, and the Examiner seems to have misinterpreted these arguments.

In particular, Appellants submitted that Chobotaro does not teach or suggest every element of claim 1 which is missing from Gandhi. Thus, Appellants submitted that dependent claim 4 is patentable at least by virtue of its dependency on claim 1.

Appellants also respectfully submitted that claim 4 recites additional features which are not disclosed by Gandhi in view of Chobotaro. The Examiner asserts in the Office Action dated July 9, 2008, on page 10, that the combination of Gandhi and Chobotaro teaches "said control means which, in a case of synchronization between said new version of the equipment and said new management data module, deletes said old management data module" as recited in claim 4. Appellants again respectfully submit that one of ordinary skill in the art at the time of the presently-claimed invention would not have been motivated to combine Gandhi and Chobotaro as suggested by the Examiner because there is no suggestion of motivation for doing so in the references themselves or the knowledge available to one of ordinary skill in the art without resorting to impermissible hindsight. Chobotaro teaches updating the device driver for a single computer system (Chobotaro, [0010]). Alternatively, Gandhi teaches networking of multiple devices (Gandhi, [0048]). Accordingly, Gandhi and Chobotaro teach fundamentally different systems because processes of Gandhi relate to networking *multiple* devices and processes of Chobotaro relate to device drivers of a *single* device. Thus, Gandhi and Chobotaro

are inapposite because of the disparity as pointed out above, and the only possible motivation for the Examiner's proposed combination is Appellants' own disclosure, the reliance on which constitutes impermissible hindsight reconstruction under MPEP §2143 (see also *In re Vaeck*, 20 USPQ 1438 (Fed. Cir. 1991)).

Accordingly, Appellants respectfully submit that claim 4 is patentably distinguished for the aforementioned reasons as well as for these additional differences.

For the sixth argument, claim 21 recites "wherein said network technologies are chosen from a group comprising: transmission networks comprising WDM, SONET and SDH type; data networks comprising Internet-IP and ATM type; and voice networks comprising conventional, mobile and NGN type."

Although the Examiner directs attention to FIG. 51 and column 7, lines 35-60 of Bowman-Amuah, such disclosure of Bowman-Amuah does not address Appellants' argument as discussed on page 19 of the Appeal Brief filed January 5, 2009, and the Examiner seems to have misinterpreted this argument.

In particular, Appellants submitted that Chobotaro and Bowman-Amuah, either alone or in combination, do not teach or suggest every element of claim 11 which is missing from Gandhi. Thus, Appellants submitted that dependent claim 21 is patentable at least by virtue of its dependency on claim 11.

Accordingly, Appellants again respectfully submit that claim 21 is patentably distinguished for the aforementioned reasons as well as for these additional differences.

REPLY BRIEF UNDER 37 C.F.R. § 41.41
U.S. Appln. No.:10/697,125

Attorney Docket No. Q78138

Appellant respectfully requests the Board not to sustain the rejections of claims 1-21.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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23373
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Date: April 24, 2009